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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LARS ROULAND et al.,

Plaintiffs and Appellants,

v.

PACIFIC SPECIALTY INSURANCE
COMPANY,

Defendant and Respondent.

G040299

(Super. Ct. No. 06CC08086)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David T. McEachen, Judge. Reversed.

Jorgensen & Salberg, Richard Allen Jorgensen and Jeffrey R. Salberg for
Plaintiffs and Appellants.

Shoecraft Burton, Robert D. Shoecraft and Michelle L. Burton for
Defendant and Respondent.

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Plaintiffs Lars and Lisa Rouland suffered damage to their hillside home following a landslide, which occurred in part due to water leaking from a broken sewer pipe. Defendant Pacific Specialty Insurance Company (PSIC), the Roulands' property insurer, denied coverage for the loss because (1) the perils covered under Coverage A and B of the policy specifically excepted loss due to leakage from a plumbing system that had occurred over a period of weeks, months, or years; (2) the loss did not fall within the policy's coverage for collapse due to hidden decay because no part of the home collapsed and the decay did not occur to any part of the home's structure; and (3) the policy specifically excluded coverage for harm due to earth movement and water damage. The trial court agreed with PSIC and granted its summary judgment motion.

We conclude the Roulands raised a triable issue of fact regarding coverage and therefore reverse the judgment. The coverage for collapse due to hidden decay fell within the policy's "Additional Coverages," and was not limited by the exception for a leaking plumbing system set forth in the "Perils Insured Against" provisions pertaining to Coverages A and B. The partial collapse of a balcony and one corner of a floor of the Roulands' home triggered coverage because the policy applied if "any part" of the structure collapsed due to hidden decay. Although some policies specifically require the hidden decay to occur within the building structure itself, the policy at issue here does not include any such restriction. Because the Roulands submitted an expert's opinion that the sewer pipe buried under their home leaked due to corrosion, a triable issue of fact exists whether the partial collapse of their home occurred due to hidden decay.

Finally, we conclude the policy's earth movement and water damage exclusions do not preclude coverage as a matter of law because a triable issue of fact exists whether the corroded pipe, not the landslide itself, was the efficient proximate cause of the loss. Accordingly, we reverse.

I

FACTUAL AND PROCEDURAL BACKGROUND

The Roulands purchased a hillside home on Morningside Drive in Laguna Beach, and obtained a homeowners' policy from PSIC. After heavy rains in February 2005, a landslide occurred on the hillside, causing damages to a portion of the Roulands' home. The Roulands retained American Geotechnical to determine the causes of the landslide and formulate a repair plan.

After investigation, Gregory Axten, a geotechnical engineer from American Geotechnical, concluded the landslide occurred because four different factors "had to come together as a group for the landslide to actually fall down." Axten identified the four factors as the weak nature of the hillside, "extremely heavy rainfall before the slide, a sewer line malfunction/performance problem and pipe break, and reduction of lateral support of this hillside by the original construction of Morningside Drive."¹ Axten concluded the "substantial contributing cause" of the landslide was the leaking sewer pipe, which allowed liquids to leak out and saturate the hillside. Axten opined the sewer pipe cracked due to stresses in the manufacturing process, and began leaking as early as 2004 and no later than January 2005.

The Roulands tendered the claim for property damage to PSIC, which denied the claim. The Roulands sued PSIC for, inter alia, breach of contract, bad faith, and declaratory relief.

PSIC filed a motion for summary judgment arguing the policy did not cover the Roulands' loss, relying in part on the policy's coverage exception for continuous or repeated leakage from a plumbing system for a period of weeks, months, or years, and a number of policy exclusions, including losses due to earth movement, water damage,

¹ Axten determined the original construction of Morningside Drive contributed to the landslide because the road cut into the slope, which made the slope steeper and more likely to fail.

weather conditions, and latent defects. In opposing the motion, the Roulands relied on the policy's additional coverage for collapse. The trial court granted PSIC's summary judgment motion, and the Roulands now appeal.

II

DISCUSSION

A. *The Loss Falls within the Section I Coverage Provisions of the Policy*

“An insurer may ‘seek[] summary judgment on the ground the claim is excluded,’ in which case it has ‘the burden . . . to prove that the claim falls within an exclusion. [Citation.]’ [Citation.] To satisfy its burden, an insurer need not ‘disprove every possible cause of the loss’ and once the insurer establishes the claim is excluded, the burden shifts to the insured to show a triable issue of material fact exists.” (*Roberts v. Assurance Co. of America* (2008) 163 Cal.App.4th 1398, 1406.) To determine whether the parties met their respective burdens, we consider the relevant coverages and exclusions of the policy in light of the Roulands' loss.

1. Coverage A Provisions

Setting aside for the moment the Section I Exclusions portion of the policy, we consider the policy's basic coverage terms. The policy is divided into two sections. Section one is entitled “YOUR PROPERTY,” and section II is entitled “YOUR LIABILITY.” The present case concerns only section I. Under the heading “SECTION I COVERAGES,” the policy includes “COVERAGE A — DWELLING,” “COVERAGE B — OTHER STRUCTURES,” “COVERAGE C — PERSONAL PROPERTY,” and “ADDITIONAL COVERAGES.”

Under “COVERAGE A,” the policy provides: “We cover: [¶] 1. The dwelling on the residence premises shown on the Declarations used principally as a private residence including structures attached to the dwelling.” The last sentence under

coverage A reads: “The coverage does not apply to land, including land on which the dwelling is located.”

Under the heading, “SECTION I PERILS INSURED AGAINST,” the policy provides: “COVERAGE A — DWELLING AND COVERAGE B — OTHER STRUCTURES [¶] We insure for direct physical loss to the property described in Coverages A and B except damage caused by: [¶] 1. Collapse, other than as provided in Additional Coverage 7. [¶] . . . [¶] 6. Continuous or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing . . . system; . . . [¶] 7. Any of the following: [¶] a. Wear and tear, marring, deterioration. [¶] b. Inherent vice, latent defect, mechanical breakdown. [¶] c. Rust, mold, or dry rot.”

In moving for summary judgment, PSIC relied on the sixth exception to Coverages A and B, “Continuous or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing . . . system[.]” PSIC is correct that the Roulands may not rely on the coverage A or B provisions of the policy because the damage resulted from a pipe that was leaking for at least two weeks, and probably much longer. By demonstrating the cause of the loss was specifically excepted from the policy’s primary coverage provisions, PSIC met its burden in moving for summary judgment.

2. Additional Coverages: Collapse

In addition to Coverages A, B, and C, the policy also includes “ADDITIONAL COVERAGES,” where it lists 10 additional enumerated coverages. In opposing summary judgment, the Roulands relied on paragraph seven, “Collapse,” which provides: “We insure for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following: [¶] a. Perils Insured Against in Coverage C — Personal Property. These

perils apply to a covered building and personal property for loss insured by this Additional Coverage 7. Collapse; [¶] b. Hidden Decay; [¶] c. Hidden insect or vermin damages; [¶] d. Weight of contents; . . . [¶] e. Weight of rain which collects on a roof; or [¶] f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of construction, remodeling, or renovation.”

The collapse provision also includes the following limitation: “Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b, c, d, e and f unless the loss is a direct result of the collapse of a building.” The collapse provision includes a further limitation: “Collapse does not include settling, cracking, shrinking, bulging or expansion.” Because collapse coverage includes its own statement of perils insured against, the exceptions to perils insured against pertaining to Coverages A and B are inapplicable. Thus, so long as a total or partial collapse of the home resulted from, inter alia, one of the Coverage C enumerated perils or hidden decay, it is covered under the Section I Coverages portion of the policy.

3. Coverage C Perils Insured Against

Unlike the perils insured against section for Coverages A and B, the provisions under “COVERAGE C — PERSONAL PROPERTY,” do not purport to cover all perils except those enumerated, but instead list the specific perils covered, as follows: “We insure for direct physical loss to property described in Coverage C caused by a peril listed below unless the loss is excluded in Section I Exclusions. Included in these perils is the following: “12. Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.” The discharge of water from a broken sewer pipe apparently would constitute an “[a]ccidental discharge . . . of water . . . from within a plumbing . . . system”

But this listed peril also includes the following exception: “This peril does not include loss: . . . [¶] . . . [¶] c. On the residence premises caused by accidental discharge or overflow which occurs off the residence premises.” To negate this exception, the Roulands would have to show that a sewer pipe *under* the house is *on* the residence premises. Obviously, the Roulands cannot make this showing. Consequently, the first listed peril does not cover the Roulands’ loss.

4. Hidden Decay

The second peril insured against under collapse coverage is “Hidden decay.” Although Axten opined stresses in the manufacturing process caused the break in the sewer line, the Roulands opposed PSIC’s summary judgment motion with a declaration from a licensed contractor, David T. Durkin, who opined the failure of the sewer “pipe was predominately caused by decay and corrosion directly to the pipe wall. The corrosion and decay of the pipe led to the loss of structural integrity to the pipe, and the pipe’s ultimate failure.” The trial court overruled PSIC’s objections to Durkin’s declaration, and PSIC does not challenge the trial court’s ruling on appeal.

5. PSIC’s Contentions

PSIC contends the loss does not fall within collapse coverage for several reasons. First, PSIC disputes that any part of the house collapsed. The Roulands’ complaint alleges: “[T]he Subject Property suffered appreciable damage that manifested while the Policy was in effect. . . . [T]he soil underlying and surrounding the dwelling (and appurtenant private structures) began to move laterally and to subside, setting up severe stresses and strains within the dwelling (and structures), and causing numerous cracks and fissures to appear in the walls and floors thereof and, on or about the same date, a large section of the slope portion below the lower left corner of Plaintiffs’ home collapsed and slid completely away and progressed across the hillside of the property, ultimately undermining the back, right corner of Plaintiffs’ home”

Thus, the Roulands' complaint alleges the land under their home collapsed, but does not use the word collapse to describe the condition of the house itself. But Lars Rouland stated in his declaration that "the rear left corner of the Morningside Drive residence collapsed." PSIC decries the Roulands' sudden use of the word "collapse" in opposing summary judgment as merely a semantical device to manufacture coverage where it does not exist. Photographs of the Roulands' home submitted in opposition to summary judgment, however, depict fallen decking that previously was attached to the right corner of the house, and several feet of flooring from the corner of one of the rooms was missing completely. Based on these photographs, it is not a semantical stretch to say that the affected portions of the balcony and floor from the right corner of the house had "collapsed." True, the collapsed portions of the home are small. The policy, however, covers losses "involving collapse of . . . *any part* of a building." (Italics added.)

PSIC points out that in their complaint the Roulands alleged lateral movement of their home caused "numerous cracks and fissures to appear in the walls and floors thereof" PSIC contends this allegation places the current situation within the policy provision: "Collapse does not include settling, cracking, shrinking, bulging or expansion." The complaint's allegations about the cracks and fissures in the home, however, do not negate the fact that part of the home collapsed. As one court noted when interpreting a provision similar to the one at hand: "The meaning of the statement in the collapse coverage provisions that '[c]ollapse does not include[] settling, cracking, shrinkage, bulging or expansion' is not immediately clear. It is difficult indeed to imagine a building collapsing without any of these symptoms appearing. The only reasonable interpretation of this language is that *mere* settling, cracking, shrinkage, bulging or expansion is not enough — there must also be an actual or imminent collapse of the structure." (*Stamm Theatres, Inc. v. Hartford Casualty Ins. Co.* (2001) 93 Cal.App.4th 531, 541-542 (*Stamm*).) Accordingly, the Roulands' allegations regarding

cracking and settling are not inconsistent with their position that part of their home collapsed.

PSIC asserts the Roulands' current position that the building partially collapsed is inconsistent with Lars Rouland's deposition testimony. We disagree. Lars Rouland testified there was no damage to the home's foundation or footings other than that under the right corner of the home. This testimony is not inconsistent with the fact that part of the floor in one room and the deck previously attached to the home collapsed.

PSIC also contends the policy's collapse provision does not cover damage to the collapsed structure itself, but only damage caused by collapse. PSIC relies on *Palub v. Hartford Underwriters Ins. Co.* (2001) 92 Cal.App.4th 645, 653, which rejected an insurance claim for the collapse of a house caused by a flood. Consistent with PSIC's argument here, the trial court reasoned that the collapse of the house did not cause the loss, but constituted only the damage. But the *Palub* court did not discuss the language of the collapse provision at issue, basing its decision on a policy exclusion, observing "[T]he collapse exclusion specifies that it applies 'if collapse of buildings or structures is specifically named elsewhere in this policy as a peril insured against.' It is named as such a peril in the personal property coverage. Thus, the policy covers loss to personal property caused by collapse unless the collapse is due to a flood. Nothing in the exclusion can be read as a grant of coverage for collapsed buildings." (*Ibid.*)

Here, the collapse provision is not subject to the type of exclusion applied in *Palub*. Moreover, the collapse provision here does not purport to limit itself to other property damage *caused by* the collapse. Instead, the policy covers "direct physical loss to covered property *involving* collapse of a building or any part of a building." (Italics added.) The Roulands house is covered property, and the loss involved the partial collapse of a building.

PSIC also contends the collapse coverage does not apply because the provision expressly does not cover loss to a pipe, "unless the loss is a direct result of the

collapse of a building.” But the Roulands are not seeking coverage for loss of a pipe, but damage to the building. Nothing in the coverage provisions suggest involvement of a pipe in the collapse of a building precludes coverage of the building itself.

Finally, PSIC contends the collapse coverage does not apply because the hidden decay was not located in the structure itself. PSIC cites cases in which the decay occurred to the building itself, and points out that the Roulands were unable to cite a single case in which the collapse coverage applied where hidden decay developed outside of the building structure. The dearth of reported cases applying collapse coverage where the decay did not occur in the building itself does not mean the policy cannot be reasonably read in such a manner. Indeed, one of the cases PSIC cites on this point, *Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1067, involved a collapse provision specifically covering: ““hidden decay of the building structure.”” (See also *Simmons v. Allstate Ins. Co.* (E.D.Pa. 1997) U.S. Dist. LEXIS 5743 [policy covering “hidden decay of the building structure”].) In contrast, the provision at issue here reads simply, “Hidden decay.” Had PSIC wished to limit the policy to decay in the building structure itself, it could have expressly done so.

B. *The Present Loss Is Not Excluded under Section I Exclusions*

Having determined the Roulands’ loss falls within the collapse coverage, we turn to whether the loss is excluded under the policy provisions entitled “SECTION I EXCLUSIONS.” Paragraph one of the exclusions provide: “We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. [¶] . . . [¶] b. Earth Movement, meaning any loss caused by, resulting from, contributed to, or aggravated by . . . landslide . . . mudflow, earth sinking, rising, or shifting [¶] . . . [¶] c. Water Damage, meaning any loss caused by, resulting from, contributed to or aggravated by: [¶] . . . [¶] (3) Water below the surface of the ground, including water

which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.”

The Roulands contend none of the Section I Exclusions apply to the Additional Coverages, such as the collapse provisions. Not so. As set forth above, paragraph one of the exclusions begins with the unequivocal statement, “We do not insure for loss caused directly or indirectly by any of the following.” This statement may be contrasted with paragraph two of the exclusions, which provides: “We do not insure for loss to property described in Coverages A and B caused by any of the following.” There is nothing in the policy which purports to except the Additional Coverages from paragraph one of the exclusions.

By its express terms, paragraph one excludes any loss listed “regardless of any other cause or event contributing concurrently or in any sequence to the loss.” Given this broad reach, the specific exclusions for earth movement and water damage would require denial of the Roulands’ claims, as there is no question landslide and rainwater contributed to the loss. But the broad exclusionary language is tempered by statute and case law.

California Insurance Code section 530 provides that an “insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.” Courts have interpreted Insurance Code Section 530 as incorporating into California law the efficient proximate cause doctrine in determining whether a loss falls within an exclusion in an insurance policy. (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 750 (*Julian*)). “Policy exclusions are unenforceable to the extent that they conflict with section 530 and the efficient proximate cause doctrine.” (*Id.* at p. 754.)

Under this doctrine, “[w]hen a loss is caused by a combination of a covered and specifically excluded risks, the loss is covered if the covered risk was the

efficient proximate cause of the loss,’ but ‘the loss is not covered if the covered risk was only a remote cause of the loss, or the excluded risk was the efficient proximate, or predominate cause.’” (*Julian, supra*, 35 Cal.4th at p. 750.) In determining whether a loss falls within a policy exclusion when there is a ““concurrency of different causes,”” the efficient proximate cause is the cause to which the loss is attributed. (*Id.* at 754.) The efficient proximate cause is the “predominant” or primary cause of the loss. (*Ibid.*) There is no coverage if the efficient proximate cause of the loss is excluded under the policy. (*Ibid.*)

In *Julian*, our Supreme Court reaffirmed the validity of the efficient proximate cause doctrine. In doing so, the court cited with approval a pair of cases with facts similar to the present case, *Sabella v. Wisler* (1963) 59 Cal.2d 21 (*Sabella*) and *Howell v. State Farm Fire & Casualty Co.* (1990) 218 Cal.App.3d 1446 (*Howell*). In *Sabella*, a builder constructed a home on inadequately compacted ground. The inadequate compaction caused the sewer pipe to break, and the water leaking from the sewer pipe, in conjunction with heavy rainfall during one season, caused the home’s foundation to settle unevenly. The insurer denied the homeowners’ claim based on the policy’s exception for “settling, cracking, shrinkage, or expansion of pavements, foundations, walls, floors or ceilings . . .” (*Sabella*, at p. 30.) The Supreme Court, however, determined the efficient proximate cause of the loss was the builder’s negligence, a cause not excepted from coverage under the policy. The court cited with approval an insurance treatise which explained: “[I]n determining whether a loss is within an exception in a policy, where there is a concurrence of different causes, the efficient cause — the one that sets others in motion — is the cause to which the loss is to be attributed, though the other causes may follow it, and operate more immediately in producing the disaster.” (*Id.* at pp. 31-32.)

Similarly, in *Howell*, the insureds owned a home, rental units, and a dog kennel on a slope subject to landslides. After not experiencing any landslides for a

number of years, a fire destroyed much of the vegetation on the slope. The following winter, unusually heavy rains fell. Due to the loss of vegetation, the water on the barren slope caused a landslide, damaging the buildings on the property. The insurer denied coverage under policy exclusions for earth movement and water damage. The appellate court reversed the trial court's grant of summary judgment for the insurer. The court determined the opinion of the plaintiff's expert, who determined the rainfall would not have caused the landslide absent the fire's destruction of the vegetation, raised a triable issue of fact whether fire — a covered peril not excluded under the policy — “was the ‘predominating cause’ or the one that set the others in motion.” (*Howell, supra*, 218 Cal.App.3d at pp. 1459-1460.)

Here, PSIC concedes for purposes of our review the efficient proximate cause of the Roulands' loss was a leaking sewer pipe. As noted above, Durkin concluded underground corrosion caused the sewer pipe to leak. Accordingly, the fact that earth movement and water damage occurred in the chain of causation does not mean the loss is excluded under the policy. We therefore conclude the Roulands raised a triable issue of fact regarding coverage, and reverse the trial court's grant of summary judgment.

PSIC defends the trial court's grant of summary adjudication on the Roulands' bad faith and declaratory relief causes of action based on the trial court's determination that the loss was not covered under the policy. Because we have determined a triable issue of fact exists as to coverage, we reverse summary adjudication as to these two claims as well.

III

DISPOSITION

The judgment is reversed. The Roulands are entitled to their costs of appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.